

Message Text

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SSO-00 NSCE-00 USIE-00 INRE-00 TRSE-00 CIAE-00 PM-04

H-02 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02

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FM AMEMBASSY LISBON

TO SECSTATE WASHDC IMMEDIATE 6611

INFO AMEMBASSY BONN PRIORITY

AMEMBASSY BRUSSELS PRIORITY

AMEMBASSY COPENHAGEN PRIORITY

AMEMBASSY LONDON PRIORITY

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C O N F I D E N T I A L SECTION 1 OF 3 LISBON 2145/1

E.O. 11652: GDS

TAGS: PINT, PGOV, PO

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SUBJ: THE PORTUGUESE CONSTITUTION OF 1976

REF: (A) LISBON 2041 (B) LISBON A-40 OF FEB 13, 1976
(C) LISBON 5984 (75) (D) LISBON A-248 OF NOV 6, 1975

SUMMARY: PRESIDENT COSTA GOMES PROMULGATED THE NEW PORTUGUESE CONSTITUTION NIGHT OF APRIL 2. GIVEN THE CONDITIONS OF PROFOUND POLITICAL INSTABILITY AND HOSTILITY UNDER WHICH THE POPULARLY ELECTED CONSTITUENT ASSEMBLY WORKED, PERHAPS THE MOST SIGNIFICANT ASPECT OF THE CONSTITUTION IS THAT IT WAS COMPLETED AT ALL. SOME SECTIONS OF THE DOCUMENT, NOTABLY ITS ECONOMIC PROVISIONS, REFLECT THE PREDOMINANTLY LEFTIST CLIMATE OF THE ASSEMBLY'S EARLY SESSIONS IN THEIR ORIENTATION. THESE PROVISIONS ARE LIKELY TO BECOME BONES OF CONTENTION DURING THE FIRST LEGISLATIVE SESSION FOLLOWING THE APRIL 25 ELECTIONS. ON THE WHOLE, HOWEVER, THE CONSTITUTION'S STRONG SAFEGUARDS FOR HUMAN RIGHTS AND ITS PROVISIONS FOR GOVERNMENT -- WHICH ARE ACCEPTED BY ALL OF THE MAJOR PARTIES -- REPRESENT A CREDIBLE BASIS FOR THE FUTURE DEVELOPMENT OF A STABLE, WESTERN-STYLE DEMOCRACY IN PORTUGAL. IT IS NOW UP TO THE PORTUGUESE THEMSELVES TO TAKE ADVANTAGE OF THE OPPORTUNITY THEY HAVE BEEN GIVEN. END SUMMARY.

1. DURING A NATIONALLY TELEVISED CEREMONY NIGHT OF APRIL 2, PRESIDENT COSTA GOMES PROMULGATED PORTUGAL'S NEW CONSTITUTION. CONSTITUTION WILL ENTER INTO EFFECT ON APRIL 25.

2. BACKGROUND: THE CONSTITUTION WAS DRAFTED BY A CONSTITUENT ASSEMBLY WHICH FIRST MET IN JUNE 1975 IN A DISTINCTLY HOSTILE ENVIRONMENT. THE ASSEMBLY HAD BEEN ELECTED APRIL 25, 1975 IN THE FIRST FREE ELECTIONS HELD IN PORTUGAL IN NEARLY 50 YEARS. THE MAJOR POLITICAL PARTIES, HOWEVER, HAD PREVIOUSLY BEEN OBLIGED TO SIGN WITH THE ARMED FORCES MOVEMENT A PACT SHARPLY LIMITING THEIR FREEDOM OF ACTION IN PREPARING THE CONSTITUTION. THE COMMUNISTS, WHO FARED BADLY IN THE ELECTIONS, HAD LAUNCHED A STRONG CAMPAIGN TO UNDERMINE THE ASSEMBLY IN HOPES OF SABOTAGING A CONSTITUTION OVER WHICH THEY WOULD HAVE ONLY MINIMAL CONTROL. ALTHOUGH OFFICIAL HARASSMENT (INCLUDING DELAYED SALARIES FOR DEPUTIES) CEASED WITH THE FORMATION OF THE AZEVEDO GOVERNMENT, THE COMMUNISTS' ANTI-CONSTITUTION CAMPAIGN CONTINUED, CULMINATING IN THE NOV 14 LOCK-IN OF THE ENTIRE ASSEMBLY BY STRIKING CONSTRUCTION WORKERS. THE ABORTIVE NOV
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25 LEFT WING COUP ELIMINATED ANY FURTHER DIRECT THREATS TO THE ASSEMBLY, AND THE DEMOCRATIC PARTIES IMMEDIATELY PRESSED FOR A REVISION OF THE AFM - PARTIES PACT. A NEW PACT SIGNIFICANTLY REDUCING THE ROLE OF THE MILITARY IN GOVERNMENT WAS SIGNED FEBRUARY 26, ALLOWING THE CONSTITUENT ASSEMBLY TO COMPLETE ITS WORK AFTER TEN MONTHS OF DELIBERATIONS.

3. INFLUENCING FACTORS: THE CONSTITUTION REFLECTS THE FOLLOW-

ING MAJOR FACTORS:

--LATIN TRADITION: THE CONSTITUTION IS MODELED ON THE NAPOLEONIC CODE. ITS LENGTH AND GREAT DETAIL WILL ENSURE THAT, LIKE OTHER LATIN CONSTITUTIONS, IT WILL BE SUBJECT TO FREQUENT REVISION BY FUTURE LEGISLATURES, AND WILL NOT RECEIVE THE SACRED TREATMENT ACCORDED THE US CONSTITUTION.

--CIVIL LIBERTIES: THE CONSTITUTION REFLECTS THE CONCERN OF ITS DRAFTERS--MANY OF WHOM SUFFERED PERSECUTION UNDER THE FORMER REGIME -- TO SAFEGUARD INDIVIDUAL LIBERTIES. THE PORTUGUESE CLAIM THAT THEIR CONSTITUTION WILL BE THE WORLD'S MOST ENLIGHTENED IN THIS RESPECT.

--SOCIALISM: OF THE 250 SEATS IN THE CONSTITUENT ASSEMBLY, 116 WERE CONTROLLED BY THE SOCIALIST PARTY. AS A RESULT, ESPECIALLY IN ITS ECONOMIC PROVISIONS, THE CONSTITUTION HAS A DEFINITE SOCIALIST CAST. THE PREAMBLE ASSERTS THAT THE DOCUMENT IS A "RECOGNITION OF THE PORTUGUESE PEOPLE'S . . . DECISION TO OPEN THE WAY TO A SOCIALIST SOCIETY."

--EARLY INSECURITY: THE PREDOMINANTLY LEFTIST CLIMATE MET THE HARASSMENT TO WHICH THE ASSEMBLY WAS SUBJECTED BEFORE NOV 25, 1975 HAD A PROFOUND EFFECT ON THE EARLY PROVISIONS OF THE CONSTITUTION. IN ORDER TO ESTABLISH THEIR "REVOLUTIONARY CREDENTIALS," AND DURING THIS PERIOD, THE MAJOR DEMOCRATIC PARTIES ACCEPTED MORE RADICAL POSITIONS THAN THEY WOULD HAVE WRITTEN UNDER MORE SECURE CONDITIONS.

4. MAJOR PROVISIONS: MAJOR PROVISIONS OF THE CONSTITUTION ARE:

(A) POLITICAL STRUCTURE: THE CONSTITUTION'S SECTION ON POLITICAL STRUCTURE IS CONSISTENT WITH THE SECOND AFM-PARTIES PACT UNDER THE CONSTITUTION, THERE WILL BE FIVE MAJOR ORGANS OF GOVERNMENT: THE PRESIDENT; THE REVOLUTIONARY COUNCIL (RC); THE GOVERNMENT; THE ASSEMBLY OF THE REPUBLIC (AR); THE COURTS.

--THE PRESIDENT: THE PRESIDENT WILL BE ELECTED BY DIRECT UNIVERSAL SUFFRAGE AT LEAST 60 DAYS AFTER THE APRIL 25 AR
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ELECTIONS. HE WILL ALSO SERVE AS COMMANDER IN CHIEF OF THE ARMED FORCES AND EX-OFFICIO PRESIDENT OF THE REVOLUTIONARY COUNCIL. HIS POWERS WILL ENABLE HIM TO:

- (1) DECLARE WAR, STATE OF SIEGE, OR EMERGENCY;
- (2) NAME THE PRIME MINISTER AFTER CONSULTING THE RC AND PARTIES AND TAKING INTO ACCOUNT ELECTION RESULTS;
- (3) NAME THE GOVERNMENT ON HAVING PROPOSES BY THE PRIME MINISTER;
- (4) DISSOLVE THE AR ON RECOMMENDATION OF THE RC;
- (5) VETO LEGISLATION, WITH A TWO-THIRDS VOTE BY THE AR NEEDED TO OVERRIDE ON SUCH KEY MATTERS AS FOREIGN OR DEFENSE POLICY, AND A SIMPLE MAJORITY IN OTHER MATTERS.

--REVOLUTIONARY COUNCIL: THE RC WILL INCLUDE: THE PRESIDENT; THE CHIEF OF THE ARMED FORCES GENERAL STAFF, AND VICE CHIEF IF ANY; THE THREE SERVICE CHIEFS OF STAFF;

THE PRIME MINISTER, IF MILITARY; AND FOURTEEN OTHER OFFICERS REPRESENTING THE THREE SERVICES. THE RC WILL ACT AS AN ADVISORY COUNCIL TO THE PRESIDENT AND GUARANTOR OF THE CONSTITUTION. ITS MAJOR POWERS ARE TO:

(1) TO REVIEW THE CONSTITUTIONALITY OF LEGISLATION AND ADVISE THE PRESIDENT TO VETO LAWS WHOSE CONSTITUTIONALITY IS OPEN TO DOUBT;

(2) AUTHORIZE THE PRESIDENT TO DECLARE WAR, MAKE PEACE, DECLARE A STATE OF SIEGE OR EMERGENCY,

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AID-05 CIEP-01 STR-04 OMB-01 CEA-01 AGR-05 /113 W

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O P 031057Z APR 76

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(3) DECLARE THE PRESIDENT PERMANENTLY UNABLE TO EXERCISE HIS
FUNCTIONS OR VERIFY TEMPORARY INCAPACITATION.
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-- THE GOVERNMENT: THE GOVERNMENT WILL BE POLITICALLY RESPONSIBLE
TO THE PRESIDENT AND THE AR. IT WILL DEFINE THE BROAD OUTLINES
OF NATIONAL POLICY WITH THE CONSENT OF THE AR. IT MAY BE TOPPLED
BY A VOTE OF NO CONFIDENCE, APPROVAL BY THE AR OF TWO
MOTIONS OF CENSURE WITHIN THIRTY DAYS, OR THE REJECTION OF ITS
PROGRAM BY THE AR. A MAJORITY OF ALL QUALIFIED DEPUTIES AS
OPPOSED TO THOSE ACTUALLY PRESENT, IS NECESSARY TO REJECT
THE GOVERNMENT PROGRAM.

--ASSEMBLY OF THE REPUBLIC: THE AR WILL BE ELECTED WITHIN THIRTY
DAYS AFTER THE PROMULGATION OF THE CONSTITUTION (DATE HAS BEEN
SET FOR APRIL 25) FOR A SESSION ENDING OCTOBER 14, 1980.
THE ASSEMBLY WILL HAVE FULL PARLIAMENTARY NO CONFIDENCE,
AND PASS MOTIONS OF CENSURE. IF A VOTE OF NO CONFIDENCE OR
MOTIONS OF CENSURE CASUE THREE GOVERNMENT CHANGES WITHIN ONE
SESSION, THE PRESIDENT MUST DISSOLVE THE ASSEMBLY AND CALL NEW
ELECTIONS. THE AR WILL HAVE THE POWER TO REVISE THE CONSTITUTION
BY A FAVORABLE VOTE OF TWO-THIRDS OF ALL DEPUTIES PRESENT,
SO LONG AS THE NUMBER OF THESE PRESENT IS GREATER THAN A
MAJORITY OF ALL QUALIFIED DEPUTIES. CERTAIN MAJOR CONSTITUTIONAL
PRINCIPLES, MAY NOT BE REVISED DURING THE FIRST SESSION.

--CONSTITUTIONAL COMMISSION: A CONSTITUTIONAL COMMISSION
COMPOSED OF A MEMBER OF THE RC, WHO WILL PRESIDE; FOUR MEMBERS
NAMED BY THE JUDICIARY; TWO MEMBERS NAMED BY THE RC; ONE MEMBER
EACH NAMED BY THE PRESIDENT AND ASSEMBLY, WILL DECIDE QUESTIONS
OF CONSTITUTIONALITY. CONSTITUTIONAL COMMISSION MEMBERS
MAY NOT BE REMOVED DURING THE FIRST LEGISLATIVE SESSION.

(B) CIVIL RIGHTS: THE CONSTITUTION CONTAINS BROAD GUARANTEES
OF INDIVIDUAL CIVIL RIGHTS. THE CITIZENS' RIGHTS TO ENGAGE
IN POLITICAL ACTIVITIES, FORM POLITICAL ORGANIZATIONS AND
PARTIES, AND BE INFORMED OF THE ACTS OF THIER GOVERNMENT ARE
GUARANTEED. NO CITIZEN MAY BE DEPRIVED OF THEIR GOVERNMENT
ARE GUARANTEED. NO CITIZEN MAY BE DEPRIVED OF HIS POLITICAL
OR CIVIL RIGHTS FOR POLITICAL REASONS. SUFFRAGE WILL BE SECRET
AND UNIVERSAL. THE STATE AND ITS AGENTS ARE RESPONSIBLE
BEFORE THE LAW FOR THEIR OFFICIAL ACTS AND AN OMBUDSMAN IS TO
BE NAMED BY THE AR. DETAILED PROVISIONS TO ENSURE PRESS
FREEDOM AND PLURALISM ARE INCLUDE.

(C) SOCIO-ECONOMIC RIGHTS: THE CONSTITUTION ALSO UNDERTAKES TO
GUARANTEE SOCIO-ECONOMIC RIGHTS. THE RIGHTS OF ALL PORTUGUESE,

INTER ALIA, TO SOCIAL SECURITY, ADEQUATE HOUSING, HEALTH CARE, EDUCATION, AND ACCESS TO HIGHER LEARNING ARE RECOGNIZED.
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WORKERS ARE PARTICULARLY WELL PROVIDED FOR. IN ADDITION TO THE RIGHT TO STRIKE AND ORGANIZE UNIONS AND WORKERS COMMISSIONS, THEIR RIGHT TO EXERCISE "CONTROL" OVER THE MANAGEMENT OF FIRMS AND TO PARTICIPATE IN ECONOMIC PLANNING ARE RECOGNIZED.

(D) ECONOMIC STRUCTURE: THE CONSTITUTION PROVIDES THAT THE NATION'S ECONOMY BE ORGANIZED ALONG SOCIALIST LINES THROUGH THE COLLECTIVE APPROPRIATION OF THE PRINCIPLE MEANS OF PRODUCTION. THE STATE IS COMMITTED TO CONDUCT AN AGRARIAN REFORM PROGRAM, PRIVATE MONOPOLIES ARE PROHIBITED, AND PAST NATIONALIZATIONS ARE DECLARED IRREVERSIBLE. THE PRIMARY MECHANISM FOR THE TRANSITION TO SOCIALISM IS THE NATIONAL ECONOMIC PLAN, WHICH WILL BE PREPARED BY A NATIONAL PLANNING COMMISSION AT REGULAR INTERVALS AND APPROVED BY THE AR.

(E) AZORES AND MADEIRA: THE AZORES AND MADEIRA'S RIGHT TO THEIR OWN "POLITICO-ADMINISTRATIVE SYSTEM" IS RECOGNIZED IN THE CONSTITUTION. SPECIFIC PARAMETERS FOR AUTONOMY WILL BE DEFINED IN STATUTES TO BE DRAFTED IN EACH ARCHIPELAGO BY POPULARLY ELECTED REGIONAL ASSEMBLIES. THE AR RETAINS THE POWER TO APPROVE THESE STATUTES. IN THE INTERIM, THE CENTRAL GOVERNMENT WILL APPROVE PROVISIONAL STATUTES BASED ON THE RECOMMENDATIONS OF EXISTING REGIONAL JUNTAS. THE ISLANDS WILL ENJOY THE RIGHT TO INTRODUCE LEGISLATION INTO THE AR, PARTICIPATE IN INTERNATIONAL NEGOTIATIONS AFFECTING THEIR INTERESTS, AND PARTICIPATE IN FISCAL, MONETARY, AND FINANCIAL POLICYMAKING AS IT CONCERNS THE ISLANDS.

5. PARTY VIEWS: THE FINISHED CONSTITUTION ENJOYS VARYING DEGREES OF ACCEPTANCE BY THE PARTIES WHICH HELPED DRAFT IT. ALL ARE PROUD OF THE CONSTITUTION'S BROAD GUARANTEES FOR CIVIL LIBERTIES AND ACCEPT THE BASIC MACHINERY OF STATE WHICH IT SETS UP. THERE IS MUCH LESS AGREEMENT ON ITS ECONOMIC AND SOCIO-ECONOMIC PROVISIONS, HOWEVER, WHICH WERE LARGELY APPROVED DURING THE PERIOD OF COMMUNIST POLITICAL PREDOMINANCE. THE POPULAR DEMOCRATS, CENTER DEMOCRATS, AND EVEN THE MODERATE, MAJORITY WING OF THE SOCIALIST PARTY NOW RECOGNIZE THAT SUCH PRINCIPLES AS WORKER CONTROL OF MANAGEMENT OR PARTICIPATION IN ECONOMIC PLANNING ARE PROBABLY UNWORKABLE. THEY HOPE TO REVISE THEM DURING THE FIRST LEGISLATURE. THE COMMUNISTS AND THEIR FELLOW TRAVELING PORTUGUESE DEMOCRATIC MOVEMENT--THE CONSTITUTION'S GREAT DETRACTORS BEFORE NOV 25 -- BECAME ITS GREAT CHAMPION IN THE FINAL DAYS OF SESSION IN AN EFFORT TO PROTECT
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THE RADICAL ECONOMIC PROVISIONS IT SUPPORTS. THE FINAL
COMPROMISE ARRIVED AT BY THE ASSEMBLY PERMITS REVISION, BUT
BARS ALTERATIONS IN CERTAIN FUNDAMENTAL PRINCIPLES, INCLUDING
"WORKERS RIGHTS." FERTILE GROUND REMAINS, THEREFORE, FOR A
MAJOR FIGHT OVER REVISION, IN THE AR FIRST SESSION.

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6. CDS VOTES AGAINST: THE REVISION COMPROMISE, HOWEVER, WAS NOT ENOUGH TO SATISFY THE QUALMS OF CDS THAT THAT CONSTITUTION
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EXCLUDED ALL BUT A SOCIALIST PATH FOR THE FUTURE, AND CENTER DEMOCRATS CAST THE SOLE VOTES/AGAINST THE FINAL TEXT OF RC CONSTITUTION APRIL 2. IN JUSTIFYING ITS ACTION, THE CDS ASSERTED THAT BY EXPLICITELY CHARTING A SOCIALIST COURSE FOR PORTUGAL, THE CONSTITUTION WAS MAKING THE COUNTRY A LEGAL PRISONER TO POLITICAL CONDITIONS AS THEY EXISTED ON APRIL 25, 1975. THE CDS EMPHASIZED, HOWEVER, THAT IT WOULD RESPECT THE CONSTITUTION AND THAT, IF CALLED UPON TO DO SO, COULD GOVERN WITH IT.

7. PRESIDENCY THE KEY? POLITICAL PARTY SOURCES HERE BELIEVE THAT THE PRESIDENT IS THE KEY ORGAN IN THE INSTITUTIONAL FRAMEWORK SET UP BY THE CONSTITUTION. HIS OVERALL COMMAND OF THE ARMED FORCES, HIS POWER TO DECLARE STATES OF SIEGE AND OF EMERGENCY, AND HIS ABILITY TO SUSPEND THE LEGISLATURE WILL, IN THEIR OPINION, GIVE HIM THE LEVERAGE TO BEND OTHER GOVERNMENTAL BODIES, --AND THE POLITICAL PARTIES -- TO HIS WILL IN ANY FUTURE TEST OF STRENGTH. SUCH A VIEW, OF COURSE, ASSUMES THAT THE PRESIDENT WOULD BE ABLE TO DOMINATE HIS REVOLUTIONARY COUNCIL -- PROBABLY A SAFE ASSUMPTION, GIVEN A STRONG ENERGETIC PRESIDENT, BUT NOT NECESSARILY SO SHOULD HE BE A WEAK INDIVIDUAL. SEEN IN THIS LIGHT, THE QUESTION OF WHO WILL BE THE NEXT PRESIDENT IS TAKING ON INCREASING IMPORTANCE IN THE EYES OF THE POLITICAL PARTIES EVEN AS THEY PREPARE FOR A DIFFICULT LEGISLATIVE ELECTION CAMPAIGN.

8. COMMENT: AS DOCTOR JOHNSON SAID OF LADY PREACHERS, "ONE IS NOT SURPRISED THAT IT IS DONE WELL; ONE IS SURPRISED THAT IT IS DONE AT ALL." THE CONSTITUTENT ASSEMBLY HAS GIVEN PORTUGAL A DOCUMENT WHICH, WHILE FAR FROM PERFECT, REPRESENTS A CREDIBLE BASIS FOR THE FUTURE DEVELOPMENT OF A STABLE, WESTERN-STYLE DEMOCRACY. THE ASSEMBLY'S ACHIEVEMENT IS PARTICULARLY PRAISEWORTHY IN LIGHT OF THE FACT THAT--AS COSTA GOMES RECOGNIZED IN A PROMULGATION ADDRESS UNDERSTATEMENT --" THE CLIMATE OF POLITICAL INSTABILITY WHICH DOMINATED NATIONAL LIFE. . . DURING THE LAST YEAR . . . WAS NOT CONDUCTIVE TO THE REFLECTION AND SERENITY WHICH YOUR WORK MERITED." NO CONSTITUTION, OF COURSE, CAN GUARANTEE A NATION'S SAFE PASSAGE TO DEMOCRACY AND STABILITY. IN THE FINAL ANALYSIS, IT WILL BE UP TO THE PORTUGUESE THEMSELVES TO TAKE ADVANTAGE OF THE OPPORTUNITY THAT RC ASSEMBLY HAS GIVEN THEM.

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